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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,553	09/24/2004	Jeanne Guerin	04-0304	5552
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OSTRAGER CHONG FLAHERTY & BROITMAN, P.C.			EXAMINER	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/711,553	<b>Applicant(s)</b> GUERIN ET AL.	
	<b>Examiner</b> Kristie A. Mahone	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-22, 24, 32 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22, 23, 25-31, 33, 34 and 36-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species I (claims 22-40) in the reply filed on April 5, 2007 is acknowledged.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "disposable or removable enclosure liner..." recited in claim 22 must be shown or the feature canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required. Claims 22-40 appears to call for a misting system having an enclosure with an internal surface and an external surface in combination with a disposable or removable enclosure liner lining the internal surface thereof. However, the instant specification fails to mention such "disposable or removable enclosure liner" commensurate with the scope of the instant claims. To be sure, Applicant's attention is directed to Paragraph 23 which describes an enclosure (12) having a primary wall (24) and secondary wall (26).

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 22-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 28 and 38 call for a disposable or removable enclosure liner." Applicant has failed to set forth or show what structure

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constitutes the recited "disposable or removable enclosure liner." Therefore, the scope of the scope of the claims can not be fully ascertained.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 22,23,25-31,33,and 37-39,as presently understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Guerin et al (US 2005/0210576).

The applied reference has a common inventors and assignees with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 22 and 31, the Guerin reference discloses a misting system (10) for misting a user (43) comprising and enclosure (12) defining a receiving area (41) for a user. As shown in Figure 4, Guerin's enclosure has an external surface (26) with a

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condensing surface (66); and an internal surface (42) defining a drain opening (36 feeding 32) capable of receiving misted air during a drying cycle. (Fig 3-4; See *generally* Paras 0035-0039). A removable enclosure liner (24) lines the internal surface of the enclosure. The system also includes a plurality of mist dispensers (48) capable of dispensing a misted substance, such as water. (Figure 2, Para 0025; 0041)). The control device (20) is capable of activating an air flow system such that the mist exits through the drain opening during a drying cycle, condensing on the condensing surfaces (Paras 0033, 0042).

Regarding claim 23, as noted in Para 0023, Guerin's internal surface comprises a mist repellant material.

Regarding claim 25, the enclosure may be cylindrical, cubical, conical, or irregular in shape. (Para 0019).

Regarding claims 26-28, and 30 as schematically shown in Figure 2, Guerin's system includes a substance input tank (70), an input display (18), height sensors ( 56); and distance sensors (62). With respect to claim 27, Examiner notes that mist dispensers (48) are configured to receive water as a function of the users height, which may be entered at display 18. (Para 0027).

Regarding claim 29, controller 20 is capable of receiving signals from height sensors (56), temperature sensors (58) and distance sensors (62) and adjusting the plurality of mist dispensers as a function thereof. (Paras 0027-0030).

Regarding claim 37, Guerin's nozzles (48, 50, 52 and/or 53) "user adjustable" since they are activated based upon the user's height. (Paras 0027-0028).



Regarding claim 38, referring to Figure 2, Guerin's system includes a "hand-held nozzle" (row 53). The nozzles in row 53 are understood as "hand-held" nozzles as they are capable of being grasped by the user. Furthermore, nozzles 53 are configured to spray the user's upper body, which is not covered by mist dispensers 48.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 34 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guerin as discussed above. The Guerin reference does not expressly disclose a "mount" coupling the enclosure to a vehicle. Instead, Guerin explains at Para 0016 that the disclosed system may be incorporated in various vehicles. Although a specific mounting structure is not located in the Guerin reference, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a mounting structure to prevent the enclosure from shifting when the vehicle moves.

10. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guerin (as discussed above) in view of Cima (4,424,598). Guerin differs in that it does not specifically disclose the power source which is used to power the controller as claimed. Attention is however directed to the Cima reference which discloses another mist delivery system with an electro-pneumatic controller (104) [which is powered by a pneumatic (air/gas) source]. (Figure 7). Therefore, it would have been obvious to a

person of ordinary skill in the art at the time the invention was made to have modified the Guerin system by employing a pneumatic (gas/air) controller, as taught by Cima. Such a modification would be considered a mere choice of preferred power source for a controller on the basis of its suitability for intended use.

11. Claims 33 and 39, are rejected under 35 U.S.C. 103(a) as being unpatentable over Guerin (as discussed above) in view of Brunelle et al (2003/0188378). Guerin does not disclose an ionized misted substance. However, the Brunelle reference teaches another misting apparatus which delivers an ionized mist for therapeutic purpose. (Para 0021-0023). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have configured Guerin's system to deliver and ionized mist to provide an invigorating environment for the user in view of Brunelle

### ***Response to Amendment***

12. Applicant's amendment to claims 33 and 39, overcomes objection to the drawings under 1.83(a) raised at page 3 and the rejection under 112, 1<sup>st</sup> paragraph raised at page 5. . The amendment claims 33, 38, and 39 is sufficient to overcome the rejections under 112, 2<sup>nd</sup> paragraph raised at page 5. Claims 24, 32, and 35 have been cancelled, thereby mooting any rejections or objections thereto.



**13.** However, Applicants amendments to the pending claims are insufficient to distinguish the invention from the cited art, or to overcome the objections and rejections discussed supra.

***Response to Arguments<sup>1</sup>***

**14.** Applicant's arguments<sup>2</sup>, see page 9, with respect to the objections to the specification and drawings regarding the "disposable or removable enclosure liner" limitation have been fully considered but they are not persuasive. Applicant submits that specification provides sufficient antecedence for the "disposable or removable enclosure liner" at paragraph 56, and that Figure 6 shows such liner. (See Remarks, p. 9). Such argument is not persuasive because Figure 6 illustrated a non-elected embodiment and applicant has not indicated that the features of Figure 6 may be incorporated in the elected embodiment. Paragraph 56 and Figure 6 do not provide sufficient support for the instant claims. There is no mention of a disposable or removable enclosure liner lining the internal surface of an enclosure comprising an internal surface and an external surface, as claimed.

**15.** Applicant's argument, see page 10, that the specification provides sufficient basis for "user adjustable nozzles" is also persuasive. The objection to the specification in this regard has been withdrawn.

**16.** Applicant's arguments, see page 10, with respect to the objection under rule 1.83(a) for failure to show the adjustable nozzle feature have been fully considered and are persuasive. The objection to the drawings in this regard has been withdrawn.

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<sup>1</sup> Filed April 4, 2007.

17. Applicant's arguments, see page 11, with respect to the Guerin reference have been fully considered, but are unpersuasive. Applicant submits that the Guerin reference does not teach a disposable or removable enclosure liner. However, as explained herein and in the prior Office Action, Guerin's portion (24) lines the internal surface of the enclosure and is inherently removable, in full response to the claim.

18. Applicant's arguments with respect to the Rehman reference have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

19. Applicant's amendment necessitated the revised ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie A. Mahone whose telephone number is (571) 272-3680. The examiner can normally be reached on Monday -Friday 8:30A.M-5 P.M..

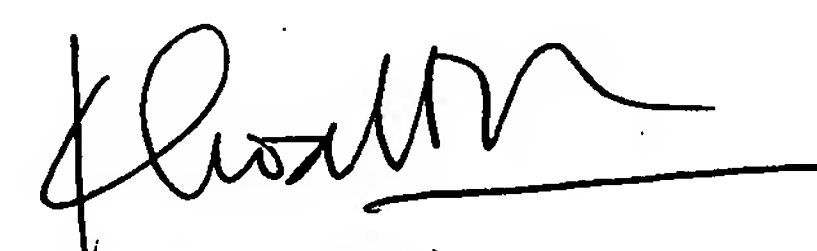
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kristie A Mahone  
Examiner  
Art Unit 3751

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**KHOA D. HUYNH**  
**PRIMARY EXAMINER**  
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